IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2431 OF 2004

Sobhagyamal Kastoormal Singhvi ...Petitioner

Versus

The State of Maharashtra & Ors. ...Respondents

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Petitioner present in-person.

Mr.D.R.More, A.P.P. for Respondent No.1.

Mr.P.M.Galani for Respondents 2 & 3.

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**CORAM: A.M.KHANWILKAR, J.**

**FEBRUARY 4, 2005.**

**P.C.**

1. Heard Petitioner in-person, Mr.More, A.P.P. for Respondent No.1 and Mr.Galani for Respondents 2 and 3.

2. The Petitioner instituted criminal action against the Respondents 2 and 3 being criminal case No.1260/S/2003 before Additional Chief Metropolitan Magistrate's 33rd Court at Ballard Estate, Mumbai in respect of offence under Section 138 of the Negotiable Instruments Act. The Respondents 2 and

3 took out application for recall of the process after being served, pursuant to order issued by the Trial Court. The Magistrate allowed that application on the reasoning that admittedly legal notice was sent to the accused by the Complainant after the statutory period. Petitioner has taken exception to that decision before this Court.

3. It is submitted that the Magistrate had no power to recall, in view of the recent exposition of the Apex Court in the case of **Adalat Prasad** and on that reasoning alone, the impugned order be set-aside and the complaint be restored to file to its original number, to be proceeded against, in accordance with law. There is substance in the argument of the Petitioner that in view of the decision of the Supreme Court in **Adalat Prasad's case**, the order of the Magistrate is without jurisdiction. Even so, I am of the view that if that order was to be set-aside, it would result in restoring wrong order issued by the Magistrate, namely; issuing process to the Respondents 2 and 3 in the complaint filed by the Petitioner inspite of the admitted position that statutory notice given

by the Complainant is beyond time. As such, no interference is warranted.

4. During the course of arguments, it was brought to my notice that the Petitioner has filed five other criminal cases (121/S/2003, 546/S/2003, 582/S/2003, 586/S/2003 and 309/S/2003) under the same provision before the same Magistrate against the Respondents 2 and 3 in respect of dishonour of cheque for approximately Rs.2,00,00,000/- (Rupees Two Crores). Counsel for the Respondents 2 and 3 submits that insofar as those cases are concerned, they are proceeding before the Magistrate in accordance with law. Even so, the concerned Magistrate is directed to ensure that all those five cases are finally disposed of, not later than six months from the receipt of writ of this Court or from the date when this order is brought to the notice of the Magistrate, inasmuch as, the Petitioner is a senior citizen. Indeed, I am told that the concerned Magistrate is conscious of that position. However, I think it appropriate to make this observation in the peculiar facts of the present case.

5. Petition disposed of on the above terms.

A.M.KHANWILKAR, J.